

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ESSEX P.B. & R. CORP.,)
Plaintiff,)
vs.) Case No. 4:08CV01705 ERW
XCAPER INDUSTRIES, LLC,)
Defendant.)

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff Essex P.B. & R. Corp.’s Voluntary Motion to Dismiss, or in the Alternative, Motion to Amend the Court’s Case Management Order [doc. #17], and Plaintiff Essex P.B. & R. Corp.’s Motion to Stay Briefing on Xcaper’s Motion for Summary Judgment in Light of the Court’s Ruling upon Essex’s Motion to Dismiss [doc. #23].

This Court issued a Memorandum and Order on August 5, 2009, in which the Court determined that Plaintiff's Voluntary Motion to Dismiss would be granted conditionally, unless Plaintiff opted to withdraw its Voluntary Motion prior to the August 13, 2009 hearing. Plaintiff did not withdraw its Voluntary Motion prior to the hearing, so it is now appropriate to grant Plaintiff's Voluntary Motion, with some conditions. Specifically, in the event that Plaintiff refiles this case in this or any other court, it will be required to reimburse the fees and costs incurred by Defendant in defending this cause of action. The precise amount of fees and costs to be reimbursed will be determined by this Court in an Order to follow.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff Essex P.B. & R. Corp.'s Voluntary Motion to Dismiss, or in the Alternative, Motion to Amend the Court's Case Management Order [doc. #17] is conditionally **GRANTED**. All of Plaintiff's claims against Defendant are **DISMISSED**, **without prejudice**.

IT IS FURTHER ORDERED that Plaintiff Essex P.B. & R. Corp.'s Motion to Stay Briefing on Xcaper's Motion for Summary Judgment in Light of the Court's Ruling upon Essex's Motion to Dismiss [doc. #23] is **DENIED, as moot**.

Dated this 26th Day of August, 2009.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE